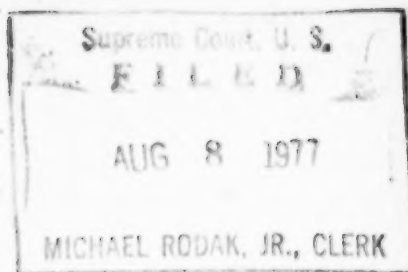


77-354

IN THE



Supreme Court of the United States

October Term, 1977

No. 76-107-C5

JACK P. QUINN,
Petitioner

v.

DONDLINGER & SONS, INC.,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Jack P. Quinn
908 Lincoln
Wamego, Kansas 66547

In his own behalf

October, 1977.

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**PETITION FOR A WRIT
OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

Jack P. Quinn prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Tenth Circuit entered on May 13, 1977, with appeal to overrule dismissal of the case, Jack P. Quinn, Plaintiff, versus Dondlinger & Sons, Inc., Defendant, case no. 76-107-C5. The case was dismissed by United States

District Judge Richard D. Rogers in the United States District Court for the District of Kansas, without a hearing, or a trial by jury as requested, instead only that I, Jack P. Quinn, answer by letter to the United States District Court for the District of Kansas by mail to the allegations made by the attorney that represented the Dondlinger & Sons, Inc., Construction Company, which I, Jack P. Quinn, did answer by mail, but the United States District Judge Richard D. Rogers did on February 4, 1977, dismiss the case Jack P. Quinn, Plaintiff, versus Dondlinger & Sons, Inc., Defendant, case no. 76-107-C5, stating that Jack P. Quinn's claims were too vague to merit attention. Jack P. Quinn filed, on February 8, 1977, an appeal to the United States Court of Appeals for the Tenth Circuit. The Honorable Oliver Seth, United States Circuit Judge, Honorable John C. Pickett, United States Senior Circuit Judge, and Honorable Robert H. McWilliams, United States Circuit Judge, ordered that the judgment appealed from is affirmed for the reasons stated in the district court's orders filed January 14, 1977 and February 7, 1977.

JURISDICTION

Jack P. Quinn is an American citizen of the United States of America and as such is guaranteed a trial by jury by the Constitution of the United States of America as follows:

Amendment VII. Jury Trial In Civil Cases

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the

United States, than according to the rules of the common law.

Article VI. General Provisions

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

QUESTION PRESENTED

The question presented is a denial of due process where:

1. Jack P. Quinn, on June 18, 1976, filed Suit in the United States District Court for the District of Kansas against Dondlinger & Sons, Inc., Construction Company to collect damages for injuries Jack P. Quinn suffered while being employed by the Dondlinger & Sons, Inc., Construction Company; Jack P. Quinn requested a trial by jury.
2. Jack P. Quinn was denied a hearing.
3. Jack P. Quinn was denied a trial by jury as requested.

STATEMENT

Jack P. Quinn was employed by the Dondlinger & Sons, Inc., Construction Company, on their construction site at the East edge of Manhattan, Kansas, building an addition to the McCall building. On a Tuesday, August 31, 1971, 4:15 p.m., Jack P. Quinn suffered a severe head injury (brain concussion) while being employed by the Dondlinger & Sons, Inc., Construction Company, on their construction site. Jack P. Quinn's body was carried out of the building under construction and loaded into Jack P. Quinn's pickup truck by men employed by Dondlinger & Sons, Inc. One man employed by the Dondlinger & Sons, Inc., was brutally beaten until he agreed to drive Jack P. Quinn's pickup truck, containing Jack P. Quinn's body, off the construction site. The men employed by Dondlinger & Sons, Inc., Construction Company thought Jack P. Quinn was dead and Jack P. Quinn was very close to death. When the men employed by Dondlinger & Sons, Inc., Construction Company were carrying Jack P. Quinn's body out of the building under construction, one man not employed by the Dondlinger & Sons, Inc., Construction Company, tried to stop the men from carrying Jack P. Quinn's body out of the building under construction and to lay Jack P. Quinn's body down and to call an ambulance. The men employed by Dondlinger & Sons, Inc., who were carrying Jack P. Quinn's body out of the building under construction told the man not employed by Dondlinger & Sons, Inc., to go somewhere else in the building and to forget everything he had seen or they would murder him.

Jack P. Quinn did regain consciousness on the following Sunday afternoon in the hospital in Wamego, Kansas. Jack P. Quinn has suffered total disability from

the injuries he has received while employed by the Dondlinger & Sons, Inc., Construction Company on their construction site. All these accounts were filed in the United States District Court for the District of Kansas and presented for United States District Judge Richard D. Rogers to study. Nevertheless the United States District Judge Richard D. Rogers dismissed Jack P. Quinn, Plaintiff, versus Dondlinger & Sons, Inc., Defendant, Case No. 76-107-C5, stating the claims are too vague to merit attention. All this information was forwarded to the United States Court of Appeals for the Tenth Circuit by certified mail, but the Court of Appeals Judges affirmed for the reasons stated in the district court's orders filed January 14, 1977 and February 7, 1977.

REASONS FOR GRANTING THE WRIT

Jack P. Quinn is an American citizen of the United States of America and as such is guaranteed a trial by jury by the Constitution of the United States of America as follows:

Amendment VII. Jury Trial In Civil Cases

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

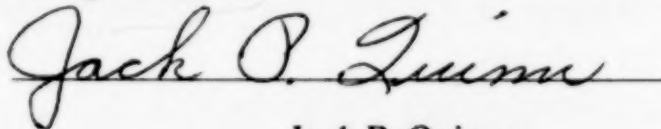
Article VI. General Provisions

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made under the authority of the

United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

CONCLUSION

It is respectfully submitted that petition for a writ of certiorari should be granted.

A handwritten signature in cursive script, reading "Jack P. Quinn", written over a horizontal line.

Jack P. Quinn
908 Lincoln
Wamego, Kansas 66547

In his own behalf

APPENDIX

APPENDIX A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

No. 76-107-C5

Jack P. Quinn,
Plaintiff-Appellant,

v.

Dondlinger & Sons Construction Company, Inc.,
Defendant-Appellee.

MEMORANDUM AND ORDER

Plaintiff, proceeding *pro se* in this action, filed a complaint which read as follows:

"I, Jack P. Quinn, hereby, on June 18, 1976, file a law suit in the United States District Court for the District of Kansas against Dondlinger & Sons Construction Company Inc., 1206 E. Lincoln, Wichita, Kansas. I, Jack P. Quinn, am requesting trial by jury. I, Jack P. Quinn, in this law suit in the United States District Court for the District of Kansas against Dondlinger & Sons Construction Company, Inc., 1206 E. Lincoln, Wichita, Kansas, am asking for \$1,000,000.00 in general damages from severe head injury, while employed by Dondlinger & Sons Construction Company, Inc., 1206 E. Lincoln, Wichita, Kansas, plus court costs."

Defendant moved to dismiss on grounds that plaintiff had not complied with Rule 8(a) (1) of the Federal Rules of Civil Procedure, which requires a plain statement of the grounds upon which jurisdiction is based. In response to this motion, plaintiff alleged (1) that he was not in a fight with anyone while employed by defendant; (2) that a certain law firm would not represent plaintiff; (3) that when plaintiff was injured on defendant's construction site, he was carried out by men who thought he was dead and placed him into a pickup truck rather than calling an ambulance; (4) that the men who carried plaintiff out of the construction site beat one man and threatened another; and (5) that plaintiff was totally disabled by his injury, which was incurred on August 31, 1971. Plaintiff also cited some random selections from the United States Constitution and alleged that the Kansas Workmen's Compensation Act is unconstitutional.

We realize that *pro se* pleadings should be interpreted as liberally as possible. *Downing v. New Mexico State Supreme Court*, 339 F.2d 435 (10th Cir. 1964); *Cook v. Whiteside*, 505 F.2d 32 (5th Cir. 1974); *Freeman v. Lockhart*, 503 F.2d 1016 (8th Cir. 1974). Nonetheless, we feel that defendant's motion is well taken and should be sustained. Wright and Miller have indicated that the burden is upon plaintiff to demonstrate that a federal court, a court of limited jurisdiction, has jurisdiction to entertain a particular matter:

"Because of their unusual nature, and because it would not simply be wrong but indeed would be an unconstitutional invasion of the powers reserved to the states if the federal courts were to entertain cases not within their jurisdiction, the rule is well settled that the

party seeking to invoke the jurisdiction of a federal court must demonstrate that the case is within the competence of that court. The presumption is that a federal court lacks jurisdiction in a particular case until it has been demonstrated that jurisdiction over the subject matter exists. Thus the facts showing the existence of jurisdiction must be affirmatively alleged in the complaint. If these facts are challenged, the burden is on the party claiming jurisdiction to demonstrate that the court has jurisdiction over the subject matter.

The facts alleged by plaintiff may indicate a basis for a state claim of assault and battery or perhaps a state workmen's compensation claim. However, none of the facts alleged by plaintiff demonstrate a jurisdictional basis for a federal cause of action.

If plaintiff wishes to challenge the constitutionality of the Kansas Workmen's Compensation Act, he will not succeed on the basis of the vague arguments he has made thus far. We note that workmen's compensation acts have been generally upheld with little difficulty in face of constitutional challenges. See 81 AM.JUR.2d Workmen's Compensation § 10-19 (1976); 99 C.J.S. Workmen's Compensation § 19 (1958). Attacks upon the constitutionality of specific aspects of the Kansas laws have, over the years, met with little success. *Elam v. Bruenger*, 165 Kan. 31, 193 P. 2d 225 (1948); *Baker v. St. Louis Smelting & Refining Co.*, 145 Kan. 273, 65 P.2d 284 (1937); *Potocan v. Hamilton Coal & Mercantile Co.*, 120 Kan. 326, 243 P. 537 (1926); *Smith v. Cudahy Packing Co.*, 115 Kan. 874, 225 P.2 110 (1924); *Swader v. Kansas Flour Mills Co.*, 103 Kan. 378, 703, 176 P. 143, 144 (1918); *Hovis v. Cudahy Refining Co.*, 95 Kan. 505, 148 P. 626 (1915); *Shade v.*

Ash Grove Lime & Portland Cement Co., 93 Kan. 257, 144 P. 249 (1914).

More importantly, defendant does not enforce the Workmen's Compensation Act of Kansas and is not a proper defendant in a suit attacking it. Even if we declared the Kansas Workmen's Compensation Act unconstitutional on some ground that is not presently apparent, we would have no jurisdiction to entertain this action, for plaintiff has not alleged facts which would support diversity of citizenship, federal question, civil rights, or any other jurisdiction. Plaintiff has no basis for suing this defendant in this Court. If plaintiff wishes to attack the constitutionality of the Kansas Workmen's Compensation Act in conjunction with a lawsuit against defendant, he should do so in a state court which might be able to entertain such an action.

Defendant has alleged no facts which would support the jurisdiction of this Court, despite two attempts to do so. As noted earlier, because plaintiff is proceeding *pro se* his pleadings are being viewed with leniency. However, the latitude which may be allotted plaintiff is not without limit. See, e.g., *Gill v. Gill*, 412 F.Supp. 1153 (E.D.Pa. 1976); *Harrell v. Directors of Bur. of Narcotics*, 70 F.R.D. 444 (E.D.Tenn. 1975). This Court need not entertain frivolous claims over which we have no apparent jurisdiction.

IT IS THEREFORE ORDERED that defendant's motion to dismiss be granted. Plaintiff has twenty (20) days in which to file an amended complaint which plainly sets out grounds that would validly support the jurisdiction of this Court in an action against this

defendant. If no such amended complaint is filed, this action will be permanently dismissed.

Dated this 14th day of January, 1977, at Topeka, Kansas.

Richard D. Rogers
United States District Judge

APPENDIX B**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

Case No. 76-107-C5

Jack P. Quinn,
Plaintiff,

v.

Dondlinger & Sons, Inc.,
*Defendant.***ORDER**

By order of January 14, 1977, this Court gave plaintiff twenty (20) days in which to file an amended complaint setting forth a plain statement of the jurisdictional basis of the suit.

While plaintiff has expanded upon his factual allegations, he has not complied with the Court's order. To the extent that plaintiff's new allegations might be considered allegations of denials of constitutional rights, they are too vague to merit attention.

IT IS ORDERED that this action be, and is hereby, dismissed.

Dated this 4th day of February, 1977, at Topeka, Kansas.

Richard D. Rogers
United States District Judge

**UNITED STATES DISTRICT COURT
for the
DISTRICT OF KANSAS**

Civil Action File No. 76-107-C5

Judgment

Jack P. Quinn

v.

Dondlinger & Sons, Inc.

This action came on for (hearing) before the Court, Honorable Richard D. Rogers, United States District Judge, presiding, and the issues having been duly (heard) and a decision having been duly rendered.

It is Ordered and Adjudged that this action be, and is hereby, dismissed.

Dated at Topeka, Kansas, this 7th day of February, 1977.

Arthur G. Johnson
Clerk of Court

Sharon L. Stark
Deputy Clerk

ENTERED IN THE DOCKET February 7, 1977.

APPENDIX C

MARCH TERM — MAY 13, 1977

Before Honorable Oliver Seth, United States Circuit Judge, Honorable John C. Pickett, United States Senior Circuit Judge, and Honorable Robert H. McWilliams, United States Circuit Judge

No. 77-1101

Jack P. Quinn,
Plaintiff-Appellant.

v.

Dondlinger & Sons Construction Company, Inc.,
Defendant-Appellee.

Upon consideration of the files and records in this case it is ordered that the judgment appealed from is affirmed for the reasons stated in the district court's orders filed January 14, 1977, and February 7, 1977.

It is further ordered that the Clerk of this court shall certify a copy of this order to the United States District Court for the District of Kansas as and for the mandate.

Howard K. Phillips
Clerk

APPENDIX D**RESPONSE**

Although I, Jack P. Quinn, did not reply to Richard D. Rogers' allegations after Richard D. Rogers, on the 4th day of February, 1977, at Topeka, Kansas, dismissed the case, Jack P. Quinn, Plaintiff, versus the Dondlinger & Sons, Inc., Defendant, case no. 76-107-C5, instead I, Jack P. Quinn, filed an appeal to the United States Court of Appeals for the Tenth Circuit. If I, Jack P. Quinn, had filed a reply to Richard D. Rogers' allegations, the following would have been my reply.

I, Jack P. Quinn, know of at least ten men who were injured on construction sites while employed by construction companies in the State of Kansas. These men hired a lawyer to represent them and had their lawyer file suit in the district court in Kansas against the construction company in the district where they received their injuries while employed by that construction company. The presiding judge would dismiss their case and refer the lawyer and his injured client to Kansas Workmen's Compensation where they were forced to settle for near nothing or, if they refused, received nothing.